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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In re Applications of

TRINITY BROADCASTING OF
FLORIDA, INC.

For Renewal of License of
Station WHFT (TV)
Miami, Florida

and

GLENDAL BROADCASTING COMPANY

For Construction Permit
Miami, Florida

To: The Review Board

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REPLY TO EXCEPTIONS

TRINITY BROADCASTING OF FLORIDA, INC.
and
TRINITY BROADCASTING NETWORK

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SUMMARY

The Mass Media Bureau urges that a legally erroneous standard of review be applied to the Trinity qualification issues. Consequently, its comments on those issues must be disregarded. The "substantial evidence" test that the Bureau suggests is the standard of *judicial* review of agency decisions, not the standard of *agency* review of Initial Decisions. When it applied the correct standard below, the Bureau properly concluded that the record does *not* warrant TBF's disqualification. Since the overwhelming weight of the evidence -- including Trinity's voluntary disclosures to the Commission and good faith reliance on counsel to interpret complex policies -- establishes that Trinity had no abusive or deceptive intent, the disqualification of TBF must be reversed.

Because the issue of renewal expectancy does not arise if Glendale is unqualified, and because the record establishes that Glendale must be disqualified, the Board need not reach the contingent exceptions filed by Glendale on renewal expectancy. In any event, TBF clearly merits a renewal expectancy.

Commission licensees earn a renewal expectancy if they broadcast programs responsive to the ascertained needs and interests of the community of license. The record shows that TBF diligently ascertained the needs and interests of Miami and adjacent south Florida communities, and broadcast hundreds of programs addressing those needs. In addition, throughout the license term TBF provided invaluable community service for the benefit of people in need. In spite of this superb record, Glendale contends that no renewal expectancy is warranted, for three reasons.

First, Glendale alleges that many of TBF's public affairs programs were not locally produced and therefore did not specifically address Miami's needs. It is well settled, however, that community

needs may be met by both local and non-local programming. Moreover, TBF's locally produced programming, standing alone, was sufficiently issue-responsive to entitle TBF to a renewal expectancy.

Second, Glendale argues that much of TBF's programming about drugs and crime is irrelevant to TBF's renewal expectancy because such programming was essentially religious and "subjective" in nature. This contention, too, lacks merit because the Commission has repeatedly held that religious programming may address community needs and support a renewal expectancy.

Third, Glendale contends that TBF's ascertainment process was not connected to its programming because TBF did not cover every single issue which its ascertainment surveys revealed to be top community issues. Glendale's theory rests on the assumption that TBF's only issue-responsive programs were those listed in the quarterly reports placed in WHFT's public file. In fact, the programs listed in the quarterly reports were just a sample of TBF's issue-responsive programming, and TBF aired programming about every major community issue. Even if TBF did not address every single "top community issue" in certain calendar quarters, its programming was sufficiently issue-responsive to earn a renewal expectancy because the programs usually addressed most major community issues. In any event, a renewal applicant may not be denied a renewal expectancy on the ground that it did not fully meet its *own* programming goals, for that would discourage licensees from setting high standards for themselves.

In sum, TBF's record of community ascertainment, issue-responsive programming, and outstanding public service to the community during the license term clearly entitles TBF to a license renewal expectancy. Moreover, as the Bureau correctly urged below, the record does not warrant TBF's disqualification. Therefore, the Initial Decision should be reversed and the outstanding service that TBF provides to children and the entire Miami community should be renewed and continued.

REPLY TO EXCEPTIONS

Trinity Broadcasting of Florida, Inc. ("TBF") and Trinity Broadcasting Network ("TBN") (collectively "Trinity") hereby reply to the exceptions filed by the Mass Media Bureau and Glendale Broadcasting Company ("Glendale") on January 23, 1996.

As shown below, the Bureau urges the Review Board to apply the wrong standard of review in resolving the Trinity qualification issues. Accordingly, the Bureau's comments on those issues must be disregarded. Indeed, when the Bureau itself applied the correct evidentiary standard in its proposed and reply findings filed with the ALJ, it properly concluded that TBF should *not* be disqualified. The Bureau's reversal of position on review is unwarranted.

The Bureau, however, is entirely correct that Glendale must be disqualified for egregious misrepresentation and lack of candor by its controlling principal, George Gardner. Because the issue of renewal expectancy does not arise if Glendale is unqualified, the Board, upon finding Glendale disqualified, need not reach Glendale's contingent exceptions about the renewal expectancy.

In any event, Glendale's contention that TBF does not merit a renewal expectancy -- based on petty flyspecking of TBF's broad record of extensive public service (ID ¶¶142-205) -- is groundless. TBN is the country's true fourth network, established years before Fox. And unlike other outlets, it presents only wholesome family programming with no violence, no sex, and no indecency, but extensive service to children voluntarily undertaken long before Congress passed the Children's Television Act. The notion that TBF's service -- which addresses fundamental community needs and feeds, clothes, shelters, counsels, and saves lives of the public young and old -- merits no renewal expectancy and should be revoked in favor of unspecified fare from a party who has repeatedly lied to the Commission, stands justice on its head.

I. The Bureau Urges an Erroneous Standard of Review for the Trinity Qualification Issues

In its exceptions, the Bureau asserts that the denial of Trinity's renewal application should be affirmed because that aspect of the ID is "supported by substantial record evidence." MMB Exc. at 1-2. However, that is the wrong standard of review. That is the standard of *judicial* review of agency decisions, not the standard of *agency* review of Initial Decisions. By urging the wrong standard, the Bureau -- for no reason at all -- reverses its own previously-stated position that the evidence in this case does not warrant TBF's

It is well settled that the "substantial evidence" test applies to *judicial* review of a Commission action, not to internal agency review of an ALJ's decision. Radio Carrollton, 69 FCC 2d 424, 425 (1978) (Commission does not review ALJ's decision under the "substantial evidence" standard used by courts when they review agency decisions); Universal Camera Corp v. NLRB, 340 U.S. 474 (1951) (substantial evidence is standard of judicial review); Greater Boston Television Corp., 444 F. 2d 841 (D. C. Cir. 1970) (same). The "substantial evidence" standard is used in judicial proceedings because, since the court does not review the administrative record *de novo*, it must affirm as long as the agency's decision has substantial support in the record and therefore is not arbitrary. In contrast, the Commission and Review Board do undertake *de novo* review of the record when reviewing Initial Decisions. Adjudicatory Reregulation Proposals, 56 FCC 2d 527, 536 (1975). Thus, the correct standard here is not whether substantial evidence can be found that supports the ALJ's disqualification of TBF, but whether the *preponderance* (i.e., the greater weight) of the evidence calls for disqualification. Radio Carrollton, *supra* (preponderance of the evidence test used in administrative proceedings); Northhampton Media Associates, 3 FCC Rcd 5164, 5169 (Rev Bd.

1988) (preponderance of the evidence must support an adverse finding; disqualification not appropriate where preponderance of the evidence does not demonstrate a “deliberate” falsification or misleading omission), affirmed, 4 FCC Rcd 5517 (1989). When the Bureau itself reviewed the record *de novo* in its proposed findings and conclusions, it determined that the preponderance of the evidence does *not* warrant TBF’s disqualification. The Bureau reached that conclusion because the numerous contemporaneous disclosures that Trinity and NMTV made to the Commission concerning their relationship clearly showed absence of an intent to deceive, and because the relationship stemmed from a mistaken legal theory. MMB Rep F&C ¶35, MMB F&C ¶¶310-11.

The law is clear that the Commission could affirm the disqualification of TBF only if a preponderance of the evidence showed that Trinity *intended* to abuse the Commission’s processes and *deliberately* concealed facts. Evansville Skywave, Inc., 7 FCC Rcd 1699, 1702, n. 10 (1992) (“a conclusion that abuse of process has occurred requires a specific finding, supported by the record, of abusive intent”); Silver Star Communication-Albany, Inc., 6 FCC Rcd 6905, 6907 (1991); Northhampton Media Associates, *supra*. Here, there is no evidence at all (let alone “substantial” evidence or a preponderance of evidence) that Trinity had any abusive or deceptive intent. TBF Exc. at 2-23. To the contrary, given the clear record of Trinity’s voluntary disclosures and good faith reliance on counsel to interpret complex FCC policies, the preponderance of the evidence plainly establishes that no intentional misconduct occurred. *Id.* Thus, the ID’s disqualification of TBF should be reversed. ^{1/}

^{1/} As the Bureau has recognized, absent intent to conceal, a finding of *de facto* control does not warrant disqualification. MMB F&C ¶308. See also Hampton Radio, Inc., 10 FCC Rcd 11070 (MMB 1995)(licensee who for three years relinquished control over finances, personnel, station policy, and programming to time broker; hired the broker’s President as its management (continued...))

Moreover, the *de facto* control issue in this case turns not on quantum of evidence, but on legal questions concerning the clarity and even-handed application of Commission policy and precedents. For example, barely a week after finding Trinity guilty of *de facto* control, the same ALJ exonerated another licensee of the same charge because that licensee had a contractual right to terminate the services it was receiving from the allegedly controlling party. Ellis Thompson Corp., 10 FCC Rcd 12554, 12560 (¶44) (ALJ 1995). Although precisely the same principle applies in this case,^{2/} the ALJ completely ignored (1) the fact that NMTV had a contractual right to terminate the services it received from Trinity and (2) the legal significance of that right under Commission precedent.

Suffice it to say that if the Commission adopts all of TBF's proposed findings and conclusions on the *de facto* control issue, that action would be judicially affirmed as being supported by substantial evidence and consistent with precedent. On the other hand, should the Commission affirm the ALJ's decision on *de facto* control, that action would likely be reversed on appeal because it would conflict with substantial precedent. At most, as in other proceedings where licensees have been found to make mistakes trying to follow complex policies in the absence of clear agency guidelines, the proper resolution is for the Commission to afford Trinity an opportunity to correct any such mistakes. The Seven Hills Television Company, 2 FCC Rcd 6867, 6888-89 (Rev. Bd. 1987); Fox Television Stations, Inc., 10 FCC Rcd 8452, 8523-24 (1995); Hampton Radio, Inc., *supra*, at n. 2 (licensee given opportunity to take steps to assure compliance with §310(d)); TBF Exc. at 31.

^{1/}(...continued)

employee, retained no significant duties and obligations itself, and failed to file ownership reports imposed a forfeiture of \$10,000 without designation for hearing); cases cited at TBF F&C ¶¶650.

^{2/} The Alabama Educational Television Commission, 33 FCC 2d 495, 508 (1972).

II. TBF Merits a Renewal Expectancy

An incumbent licensee is entitled to a renewal expectancy if its performance during the preceding license term has been "substantial," meaning "sound, favorable and substantially above a level of mediocre service which might just minimally warrant renewal." In deciding whether to award a renewal expectancy, the Commission focuses on non-entertainment programming broadcast by the station, including news, public affairs, and public service announcements. Monroe Communications Corp. v. F.C.C., 900 F.2d 351, 353 (D.C. Cir. 1990) (Monroe) (citations omitted). Specifically, the Commission weighs the following factors: (1) the licensee's efforts to ascertain community needs, problems and interests, (2) the licensee's programmatic response to the community's ascertained needs, (3) the licensee's reputation in the community for serving community needs, problems and interests, (4) the licensee's record of compliance with the Communications Act and FCC rules and policies, and (5) the licensee's community outreach (or lack thereof). See, Fox Television Stations, Inc., 9 FCC Rcd 62, 63 and n. 5 (1993) (Fox). Glendale's contingent exceptions take issue with TBF's performance under factor (2) (programmatic response to community needs).^{3/}

The evidence establishes that TBF had an outstanding record of performance during the 1987-1991 license term. Not only did the station broadcast an enormous amount of programming responsive to ascertained problems and needs, but it undertook extensive efforts to aid disadvantaged persons through food and clothing bank programs, counseling referrals, and other forms of extraordinarily generous community outreach service (ID para. 208-09), all of which Glendale

^{3/} Glendale also accuses TBF of the "egregious and pervasive misconduct chronicled in the" Initial Decision (ID). GL Exc. at 19. That charge merely parrots the ID, and thus has been fully answered by Trinity's Exceptions.

naturally ignores. In the area of programming, TBF's issue-responsive programming included the following:

1. **Feedback**, a locally produced public affairs program which addressed numerous issues during the license term, including aging, substance abuse, child abuse, poverty, crime, minority issues, education, health care, homelessness, pollution, transportation, unemployment, and youth (ID ¶151).

2. **South Florida Public Report**, a locally produced public affairs program which addressed issues such as inflation, crime, substance abuse, education, and homelessness (ID ¶154).

3. **Miami Praise the Lord**, a locally produced program which addressed issues such as abortion, family issues, child abuse, crime, minority issues, substance abuse, the economy, education, population growth, health care, homelessness, aging, poverty, pornography, and transportation (ID ¶157).

4. **Joy in the Morning**, a program which addressed issues such as AIDS, child abuse, crime, minority issues, substance abuse, education, population growth, health care, homelessness, pollution, aging, family issues, transportation, and unemployment (ID ¶161).

5. **Praise the Lord**, a program which covered issues such as abortion, child abuse, crime, minority issues, substance abuse, education, health care, homelessness, the economy, and family issues (ID ¶163).

6. **Calling Dr. Whittaker**, a health program which also covered public affairs issues such as the environment, substance abuse, and aging (ID ¶164). TBF also aired **The Doctor and the Word**, another program focusing on health issues (ID ¶168).

7. **A Call to Action**, a program focusing on contemporary legal and constitutional issues such as freedom of speech, gay rights, and church/state separation (ID ¶165, TBF Ex. 33, Tab H, p. 145, 169, Tab HH, pp. 83-84).

8. **Treasures Out of Darkness**, a program which covered social issues such as spouse abuse, substance abuse, crime, and homelessness (ID ¶166).

9. **700 Club**, a general interest program which discussed topics such as abortion, child abuse, crime, minority issues, substance abuse, education, health care, aging, family issues, and unemployment. (ID ¶167).

10. **Why Wait**, a program focusing on teenage sexuality (ID ¶169).

From 1987 to 1991, TBF listed 794 programs and program segments, plus 3,884 public service announcements, in its quarterly reports of issue-responsive programming.^{4/} Moreover, these were not the only TBF programs that addressed community needs. Teresa Robin Downing, TBF's former Public Affairs Director and current Production Manager, testified that while compiling quarterly reports, she "would review the [community affairs] reports for our local programs and pull out *some, but not necessarily all*, of the local programs which addressed one of the top five [community] problems." (TBF Ex. 33, p. 8) (emphasis added). Further, long before the Children's Television Act mandated such programming, TBF showed exemplary commitment to serving the needs of children, including programs teaching obedience to parents; cooperation, compromise, and unselfishness; racial and ethnic harmony; moral behavior; citizenship; and biblical history, geography, and culture. (ID ¶¶171-78.)

^{4/} See TBF Ex. 33, Tab H, pp. 3-302; TBF Ex 33, Tab HH, pp. 3-177.

Nevertheless, Glendale claims that TBF is not entitled to a renewal expectancy because (1) many of TBF's public affairs programs are not locally originated, (2) some of TBF's public affairs programs discuss personal religious experiences, and (3) TBF's programming did not always address the issues that were mentioned most frequently in TBF's ascertainment surveys. None of these contentions has merit.

A. National Programs and Local Needs

Glendale asserts that "a large number of the programs listed in the quarterly reports [of TBF programs addressing community needs] are interviews with persons in southern California (TBN's headquarters) or elsewhere concerning issues in those communities. TBF failed to show any connection between the needs and problems of those areas and the needs and problems of the Miami area." GL Exc. at 16. In other words, Glendale contends that TBF's programming was not responsive to Miami's needs because many TBF programs were national rather than local in nature.

That argument is flatly contrary to Commission law. It is well settled that while broadcasters are expected to serve local community needs, they "may choose from non-local as well as local sources to meet those needs . . . national and institutional programming may acceptably meet local needs." Seattle Public Schools, 4 FCC Rcd 625, 634 (Rev. Bd. 1989) (citations omitted). See also, WHYY, Inc., 93 FCC 2d 1086, 1095 (1983) ("national programming provided by PBS . . . can address and meet the needs and interests of Wilmington as [station's] primary service area."); Community Television of Southern California, 72 FCC 2d 349, 353 (1979) ("national programming can and does serve local programming needs and interests.") (citation omitted); Georgia State Board of Education, 70 FCC 2d 948, 957 (1979) ("the source of the licensee's programming is not as significant as the responsiveness of that programming to the needs and interests of its service area").

Hence, it is irrelevant that TBF treated some of its ascertained problems with programs that were produced nationally rather than locally. Programs broadcast on WHFT that addressed ascertained problems like crime, substance abuse, and education were fully responsive to those problems regardless of production origin.^{5/}

Moreover, even if none of TBN's national programming had been relevant to Miami needs, TBF's locally originated programming was sufficient by itself to earn a renewal expectancy. At least once a week during the license renewal term, WHFT broadcast **Feedback** (a local one-hour program) and **Miami Praise the Lord** (a local two-hour program), and usually these programs aired twice a week (TBF F&C ¶¶498, 502, TBF Ex. 33, pp. 10-12).^{6/} There is no merit to Glendale's claim that TBF's locally originated programming was insufficient to earn a renewal expectancy because "[a]ccording to TBF's quarterly reports, it was more common for TBF to have no local programming whatsoever on an issue in a given quarter than for TBF to meet its stated goal of having four local programs each quarter on each top issue." GL Exc. at 14. That argument is based on the erroneous assumption that TBF's quarterly reports listed *all* of its issue-responsive locally originated programming. In fact, TBF's quarterly reports included "some, *but not necessarily all*, of the local programs which addressed one of the top five [local] problems." (TBF Ex. 33, p. 8) (emphasis

^{5/} In addition to general discussion of such problems, which was responsive in and of itself, many of TBN's national programs addressed local issues by presenting guests who discussed problems from a local as well as a national perspective. For example, if a guest planned to discuss the Neighborhood Watch program, TBN would ask the guest to explain how viewers could become involved with such programs in their own communities. (TBF Ex. 34, p. 4.) Similarly, discussions of substance abuse on the Joy program would include information on where viewers could go to find help in their own communities. (TBF Ex. 32, p. 28.)

^{6/} For several months in 1991, WHFT substituted **South Florida Public Report** (a local, half-hour public affairs program) for **Feedback**. (TBF F&C ¶501.)

added). This was consistent with Commission policy, which holds that a station's quarterly "list [of issue-responsive programming] is intended to be exemplary in nature." Commercial TV Stations, 98 FCC 2d 1075, 1108 (1984). See also, Deregulation of Radio, 104 FCC 2d 505, 507 (1986) (noting that such lists need not be "comprehensive" and that licensee may list fewer than five issues or more than ten).

B. Religious Programming

Glendale also contends that many of TBF's programs dealing with the issues of crime and substance abuse are irrelevant to community needs because they are "descriptions of personal religious experiences by former addicts and abusers." GL Exc. at 16. Glendale claims that such programs are not sufficiently "objective" to constitute "issue responsive programming." Id. at 18-19. In support of this argument, Glendale relies on the ALJ's exclusion of testimony by viewers who testified that they were rescued from drug and alcohol addictions after watching TBF programs (Tr. 127).

Once again, Glendale's position conflicts with Commission precedent. It is well settled that religious programming may constitute issue-oriented programming for purposes of renewal expectancy. See, e.g., Pillar of Fire, 99 FCC 2d 1256, 1269-71 (Rev. Bd. 1984), (religious programming may be issue-responsive); affirmed, 2 FCC Rcd 519 (1987). Cf. Intercontinental Radio, Inc., 99 FCC 2d 608, 637-38 (Rev. Bd. 1984), (noting community's satisfaction with religious music, and describing such programming as "nonentertainment"), affirmed, 100 FCC 2d 817 (1985).

Moreover, the ALJ's evidentiary ruling is not on point. The testimony excluded by the ALJ was offered to show that "people change their minds as a result of [Trinity programs]," to which the ALJ responded that he was "not aware of any case where the Commission has ever considered

subjective experiences of individuals as a result of watching programming." (Tr. 130). TBF's quarterly reports, by contrast, were not introduced to show the subjective *effects* of TBF programs on TBF viewers, but to show that the programs responded to community needs by *addressing the issues* of drugs and crime. Specifically, the programs in question discussed one of many viewpoints about the causes and cures of crime and drug abuse -- the viewpoint of ex-convicts and ex-drug abusers who had undergone religious conversion experiences. Such viewpoints are no more subjective than opinions expressed by sociologists, police officers, or politicians discussing the same issues -- which would clearly qualify as issue-responsive programming.

Further, the TBF programs in question often addressed issues other than personal religious experiences, and were therefore sufficiently "objective" to be responsive to community needs even if accounts of religious experiences, standing alone, are not. For example, in one Praise the Lord cited by Glendale as an example of "subjective" religious programming, Ron Rearick (an ex-convict) described not only his conversion, but also the "verbal abuse from his father" that made his criminal career "natural," and the details of his life of crime. (TBF Ex. 32, Tab H, p. 51). Similarly, in a 700 Club program cited by Glendale, Richard Matas revealed that "there are 420 street gangs in Los Angeles with 40,000 members, with the gang mentality being very strong, with gang members being willing to die for each other." (*Id.*). Both of these programs would clearly be issue-responsive in the absence of a religious component, because both describe potential causes of crime (abusive parents and gangs).

C. Ascertainment

Glendale also contends that "[t]here was no close connection between [TBF's] ascertainment process and its programming . . . Many top community issues (as determined by TBF's ascertainment)

were minimally covered." GL Exc. at 19. In other words, Glendale contends that (1) TBF failed to meet its goal of covering the top five problems identified in its ascertainment surveys (TBF Ex. 33, p. 14) and (2) TBF's failure to meet its goal should defeat a renewal expectancy. Not only is Glendale's factual analysis deficient,^{7/} but the argument has no merit.

Glendale's claim that TBF failed to meet its goals is based on the assumption that TBF's only issue-responsive programs are those listed in its quarterly reports. That assumption is incorrect. As noted above, Ms. Downing testified that WHFT's quarterly reports included "some, *but not necessarily all*, of the local programs which addressed one of the top five problems." (TBF Ex. 33, p. 8) (emphasis added). She also testified that "[u]sually the top five problems would be covered about equally during a calendar quarter, and we tried to ensure that each problem was covered in at least four programs each quarter." (TBF Ex. 33, p. 14). Indeed, "it was [Downing's] job to ensure that *all the problems* mentioned during each calendar quarter received some response in WHFT's

^{7/} Glendale's analysis of TBF's programming is flawed. For example, Glendale alleges that sixteen issues "were not the subject of any programming during the quarter in which they were ascertained to be top issues." GL Exc. at 12. However, only five of these issues were among the five "top" issues in TBF's ascertainment surveys: "Youth/Children" (1st Quarter 1988), "Transportation/Traffic (3rd Quarter 1988), "Health Care" (2nd Quarter 1989), "Housing" (2nd Quarter 1989, 1st Quarter 1990) "Senior Citizens/Elderly" (4th Quarter 1989). See TBF/Glendale Joint Ex. 2 (listing results of ascertainment surveys). Moreover, all sixteen issues were listed in TBF quarterly reports at one time or another during the license period. (TBF Ex. 33, Tab H, pp. 1, 30, 46). As Glendale admits, TBF pledged to emphasize "the top five ascertained issues." GL Exc. at 11. By and large, TBF did exactly that. Glendale also claims that "there are only twenty-one instances in which TBF offered four or more local programs on an issue in a given quarter." GL Exc. at 15. In fact, TBF's quarterly reports show that TBF aired four or more local programs about several issues not mentioned on Glendale's list of issues given heavy local coverage, including Drugs/Alcohol Abuse (1st Quarter 1987, 3rd Quarter 1991) (TBF Ex. 33, Tab H, pp. 3-5, Tab HH, pp. 129-38), Cost of Living/Poverty (4th Quarter 1989) (TBF Ex. 33, Tab H, at 248-49), Health Care (1st Quarter 1990) (TBF Ex. 33, Tab H, pp. 273-74).

programming during that quarter." (TBF Ex. 33, p. 14) (emphasis added). Thus, TBF's quarterly reports were merely a sample of WHFT's issue-responsive programming.

The Commission has said that licensees need not mention every single issue-responsive program in their quarterly reports, holding that the "list [of issue-responsive programming] is intended to be exemplary in nature." Commercial TV Stations, 98 FCC 2d at 1108. See also, Deregulation of Radio, 104 FCC 2d at 507 (noting that such lists need not be "comprehensive" and that licensee may list fewer than five issues or more than ten). Accordingly, Ms. Downing's testimony that TBF's quarterly reports were "exemplary in nature" must be credited, and TBF may not be penalized for failing to list every single issue-responsive program in its quarterly reports.

Even if the programs listed in TBF's quarterly reports were the only public service programs broadcast by the station, TBF's alleged failure to meet its own programming goals cannot deprive TBF of a renewal expectancy. The Commission held, in its order eliminating formal ascertainment requirements, that "the focus of our inquiry shall be upon the responsiveness of a licensee's programming, not the methodology utilized to arrive at those programming decisions." Commercial TV Stations, 98 FCC 2d at 1101. Cf., Seattle Public Schools, *supra*, 4 FCC Rcd at 629 ("how much programming to present regarding which needs is largely within the licensee's good faith discretion."). Since ascertainment methodology and amount of responsive programming are matters of licensee discretion, a licensee may not be denied renewal expectancy for any deviation from the ascertainment and programming policies it has set for itself. Indeed, to base renewal expectancy on whether the licensee met its *own standards* would penalize licensees with high performance standards and reward those with low performance standards. That, of course, would simply induce licensees to set low (and thus easily met) ascertainment and programming standards.

In any event, the programming listed in TBF's quarterly reports *did* substantially address the needs of the Miami community. Glendale lists TBF's 35 "top issues" from five separate ascertainment surveys. Statement at 6-8. Of those 35 issues, TBF broadcast programming addressing 26 (or 74%) in the same quarter they were listed as major issues in ascertainment survey results. *Id.* Many of the issues not addressed in the *same* quarter were addressed in other quarters. For example, while TBF did not list any programs about transportation in its quarterly report for the third quarter of 1988 (*id.* at 7), it did address that issue in the second quarter of that year (TBF Ex. 33, Tab H, pp. 126-27). Similarly, while TBF did not address "Pollution/Environment" in the fourth quarter of 1987, it did address that issue in 1989. GL Exc. at 6. Overall, it is clear from the record that TBF's public service programming during the license term was directly responsive to the ascertained needs of the Miami community.

III. CONCLUSION

In sum, TBF's record of community ascertainment, issue-responsive programming , and outstanding public service to the community during the license term clearly entitles TBF to a license renewal expectancy.

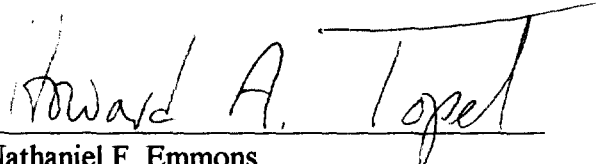
Moreover, the Mass Media Bureau's incomprehensible switch to an erroneous legal standard for the Trinity qualification issues and its consequent erroneous conclusion must be disregarded. As the Bureau correctly urged in its proposed findings and conclusions below, the record does warrant disqualification of TBF. The disqualification of TBF must therefore be reversed.

Respectfully submitted,

**TRINITY BROADCASTING OF FLORIDA,
INC.**

and

TRINITY BROADCASTING NETWORK

By: 
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February 28, 1996

CERTIFICATE OF SERVICE

I, Howard A. Topel of the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 28th day of February, 1996, copies of the foregoing "Reply to Exceptions" were sent by first class mail, postage prepaid, to the following:

- * The Honorable Joseph A. Marino
 Chairman, The Review Board
 Federal Communications Commission
 2000 L Street, N.W., Room 211
 Washington, D.C. 20554

- * The Honorable Marjorie R. Greene
 Member, The Review Board
 Federal Communications Commission
 2000 L Street, n.W., Room 206
 Wasihngton, D.C. 20554

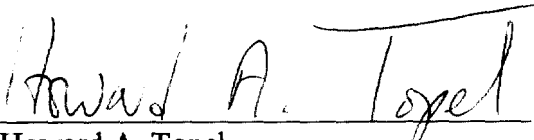
- * Leland Blair
 The Review Board
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